

EXHIBIT 9



Deposition of:
Eden Rogers

May 21, 2021

In the Matter of:
**Rogers, Eden, et al v. U.S. Dept. of
Health and Hu**

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Eden Rogers
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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
Civil Action No. 6:19-cv-01567-JD

Eden Rogers, et al.,
Plaintiffs,

vs.

United States Department of Health and Human
Services, et al.,

Defendant.

VIRTUAL

DEPOSITION OF: EDEN ROGERS

DATE: May 21, 2021

TIME: 1:01 p.m.

LOCATION:

TAKEN BY: Counsel for Governor Henry McMaster
REPORTED BY: MICHELLE BAKER LEE,
Certified Court Reporter

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8
9
10 (INDEX AT REAR OF TRANSCRIPT)

1 A My wife's name and my name.

2 Q Both of you?

3 A Uh-huh.

4 Q Okay. How many bedrooms does it have?

5 A Four.

6 Q Okay. Prior to the current house, I think
7 in Taylors, did you rent or own that house?

8 A We rented that house.

9 Q Okay. You already told me approximately how
10 long you were there. I've already forgotten it. But
11 for the period of time that you were there you were
12 renting?

13 A Yes.

14 Q And then previously you had, I guess, two
15 other addresses in Greenville. Were those rented or
16 owned properties?

17 A Rented.

18 Q Okay. The house in Taylors prior to this
19 one that you rented, how many bedrooms in that house?

20 A Three.

21 Q Okay. Who else lived with you in that
22 residence?

23 A My wife, myself, and our children.

24 Q Okay. How many children?

25 A Two.

1 Q Okay. Are they biological children of
2 either you or Brandy?

3 A Yes.

4 Q Of which?

5 A Me.

6 Q Okay.

7 A They're my biological children.

8 Q Okay. So are they from a prior marriage?

9 A Yes.

10 Q Okay. When was that? That's a poorly
11 worded question. When did you -- let me back up and
12 ask this in a way that's more sequential.

13 When did you and Brandy get married?

14 A End of 2015.

15 Q Okay. Prior to that when did you and Brandy
16 meet?

17 A We met in 2009, the end of 2009.

18 Q Okay. How did you meet?

19 A We were next-door neighbors.

20 Q Okay. And where was that?

21 A In St. Marys, Georgia.

22 Q Okay. So you met in 2009. When did you and
23 Brandy whether you call it, you know, develop a
24 romantic relationship or begin dating or when did that
25 occur?

1 A I am going to need to count. We began
2 dating in 2000 -- the end of 2013.

3 Q Okay. So you knew Brandy from 2009 to 2013
4 approximately, began dating at that point. Did you
5 have an engagement thereafter?

6 A We had an informal engagement, I suppose.

7 Q And then you were married in 2015, you said?

8 A Yes.

9 Q Where -- geographically where did you get
10 married?

11 A In Greenville.

12 Q Okay. Because you were living in Greenville
13 at the time?

14 A Yes. Actually, we were technically
15 married -- the ceremony was in Pendleton, South
16 Carolina.

17 Q Okay. Where in Pendleton? I'm just
18 curious.

19 A There's an old farmhouse that --

20 Q Is it called Farmer's Hall? It's like on
21 the -- kind of the city plaza, the city square?

22 A No, it's a private property.

23 Q Okay. I was just curious. I grew up
24 spending a lot of time in Pendleton --

25 A Oh.

1 Q -- so I was curious. It doesn't really
2 matter at all but just wondered.

3 Okay. So you -- and I'm sorry if I keep
4 kind of going over the same ground again but I'm
5 trying to learn as much as I can.

6 So you met Brandy in 2009, you -- as
7 neighbors. Did you continue as neighbors from 2009
8 through 2013?

9 A No. I don't recall when she moved but at
10 some point in that period of time she moved to
11 Jacksonville, Florida.

12 Q Okay. Obviously you must have stayed in
13 touch?

14 A Yes.

15 Q I guess explain a little bit -- so I guess
16 what I'm trying to figure out, between 2009 and 2013
17 there was -- was it like a professional relationship
18 or a friendship relationship or there was a distance
19 involved?

20 A Yes. We --

21 Q Tell me a little bit about that.

22 A We quickly became best friends after
23 leaving.

24 Q Okay. And in 2013 -- I'm sorry. In 2009
25 when you met, were you at that point single or were

1 you at that point married?

2 A At that point I was married and separated.

3 Q Okay. When -- when did that marriage begin?

4 A In 2006.

5 Q Okay. And when did it, like, finally
6 conclude in a divorce or a decree of divorce?

7 A I'm counting. One second.

8 Q Sure. Take your time.

9 A February of 2013.

10 Q Okay. And what was the name of your spouse
11 during that marriage?

12 A James Hoffmeyer.

13 Q Okay. When were -- when were your children
14 born?

15 A My first child was born May of 2009 and my
16 second was born in April of 2012.

17 Q Okay. Prior -- prior to that -- you were
18 married to James; is that right?

19 A Yes.

20 Q Prior to that were there any -- did you have
21 any marriage prior to that?

22 A No.

23 Q Okay. What's the highest level of education
24 or the highest degree that you've received?

25 A High school diploma.

1 Q So when you moved to Greenville it must have
2 been early 2015?

3 A Yes.

4 Q At that time in Georgia, whether by statute
5 or constitutional amendment, the state of Georgia did
6 not recognize same-sex marriage?

7 A Right.

8 Q And when you -- and South Carolina did as a
9 result of I think it was the Bradacs case in 2014.
10 And then a second ago when you said -- you referred to
11 the joke, you're talking about the Supreme Court --
12 the US Supreme Court's decision in Obergefell later in
13 2015?

14 A Yes.

15 Q I got all that?

16 A Yes.

17 Q Okay. I was pretty sure -- and it's hard,
18 right, especially in a written record. When we're all
19 talking, we probably know what we're talking about,
20 but the record, it's just typed words on it. So I
21 wanted to make sure all that subtext is -- makes sense
22 to whoever ends up reading this later.

23 Whose idea was it to sue Governor McMaster
24 and federal HHS and the other Defendants?

25 A I don't recall.

1 Q Okay. Did somebody suggest it to you?

2 A No. I don't recall as in I don't recall if
3 the idea initially came to myself or my wife.

4 Q I see.

5 A And that is what I mean by I don't recall.

6 Q Okay. Okay. Thank you for clarifying.

7 Did the two of you discuss it over a period
8 of time?

9 A Not really, no. And if by period of time
10 you mean years, obviously, no. We took time after
11 finding ourselves in the situation we were in being
12 denied, we took time to talk about it and discuss
13 what -- discuss our feelings and what we were, you
14 know, willing to do. And so by time if you mean
15 years, no. By time if you mean weeks, of course we
16 discussed it with each other, what we felt like we
17 needed to do.

18 Q Did you talk to anyone else other than
19 Brandy when you were weighing those options and
20 thinking through what you wanted to do?

21 A I do not recall the context of
22 conversations, but I was at the time confiding in our
23 pastor for, I guess you could say, some moral support.
24 This was -- this was very difficult for us so I was
25 having regular conversations with our pastor, like I

1 said, for moral support.

2 Q What is your -- what was the pastor's name?

3 A Lisa Bovee-Kemper.

4 Q And she's a pastor at the UU, Unitarian
5 Universalist Church you mentioned?

6 A Yes.

7 Q Okay. Was there anyone else that you talked
8 to about the situation?

9 A Before -- before we decided to move forward
10 or about being denied?

11 Q Let me -- I'll ask multiple questions, then.
12 Before you applied to Miracle Hill, did you
13 talk to anyone else other than Brandy about applying
14 to Miracle Hill?

15 A We did not talk to anyone else about
16 specifically applying to Miracle Hill. We had talked
17 to people, though, about wanting to foster and trying
18 to become foster parents.

19 Q Okay. Who had you talked to about that?

20 A It would have to be a very long list because
21 I believe everyone that knows us knew that we wanted
22 to foster. In detail we would talk to my kids' dad.
23 He's -- we're a very close-knit family so he's a part
24 of their lives and our lives, and he knew we wanted to
25 foster. He had said he wanted to be a father figure

1 to any children that we bring into the family
2 (indiscernible audio) another. My siblings have
3 always known we wanted to foster, our closest friends.
4 Before all of this, everyone that knew us knew that we
5 wanted to be foster parents.

6 Q Would it be fair to say -- and, again, don't
7 let me put words in your mouth but this is the easiest
8 way to ask the question. Would it be fair to say that
9 from the time that you and Brandy -- you moved in
10 together back in 2013 -- from even starting at that
11 time that you two were interested in and wanted
12 someday to be foster parents?

13 A Absolutely.

14 Q Okay. You mentioned a second ago that James
15 is still very involved.

16 A Yes.

17 Q Does he live in this area?

18 A He still lives in St. Marys, Georgia.

19 Q Okay. About how often do you see him in
20 person? Well, that's a bad question, right? Because
21 of COVID, nobody sees anybody anymore.

22 Prior to COVID about how often would you see
23 him in person?

24 A At least every couple months.

25 Q Okay. During COVID, let's say since early

1 2020 to the present, how often do you or your children
2 see him in person?

3 A It was -- there were about eight months
4 maybe nine months -- well, there were a number of
5 months in the beginning of COVID where he was not able
6 to visit because he's in the military and he had
7 orders -- no-travel orders. Since then he has been
8 able to visit more frequently. I'd say since November
9 he's visited four or five times with another visit in
10 the next month.

11 Q Okay. Why did your marriage to James end?

12 A I was really young when we got married and
13 we just realized that being married wasn't probably
14 the relationship that best suited us. We still wanted
15 to have a relationship and be friends and co-parent
16 and share, you know, our lives together, but we
17 realized that being married and having that sort of
18 relationship was not -- we weren't best suited for.

19 Q Was it an amicable separation and divorce?

20 A Yes, absolutely. We did it all ourselves.

21 Q At the time you married James, did you
22 consider yourself to be heterosexual?

23 A Yes.

24 Q And what do you consider your sexual
25 orientation to be now?

1 A That's complicated. I don't know if you're
2 looking for this in-depth of an answer, but there is a
3 term called demisexual which it describes someone that
4 doesn't fall in love with a person with a specific
5 gender. I feel like I fall in love and am attracted
6 to someone's brain and the -- the intellectual
7 connection that you can have with someone and the
8 emotional connection.

9 So, yeah, I -- I don't consider myself
10 specifically -- I'm not heterosexual but I don't think
11 it's fair to say, like, that I am specifically a
12 lesbian because I could have just as easily fallen in
13 love with somebody of another gender that had the same
14 emotional and intellectual connection with me.

15 Q And just to make sure I heard the word right
16 and the court reporter, did you describe it as
17 demisexual, like d-e-m-i?

18 A Yes.

19 Q Okay. Is that different than bisexual?

20 A I -- I find it to be different.

21 Q In what way?

22 A Well, bisexual implies that you are only
23 sexually attracted to -- or you are sexually attracted
24 to men or women, male or female. And I recognize that
25 those -- those two things have nothing to do with

1 Q So the text of the tweet and the image in
2 the tweet are, I think, either very close or maybe
3 identical. This one was tweeted out by SC Equality --

4 A Oh.

5 Q -- (indiscernible audio) the ACLU of South
6 Carolina. I think that's -- that's the difference.
7 But I think you're right that they're very similar.

8 A Okay.

9 Q Had you ever seen this tweet?

10 A No.

11 Q Are you familiar with SC Equality?

12 A I've heard of it.

13 Q Okay. Have you ever spoken with anyone from
14 there?

15 A To be fair, probably, yes, since all of
16 this, but before the Complaint was filed, no.

17 Q Okay. You can set those exhibits aside.

18 In early 2019 it was national news that
19 federal HHS had granted a waiver specifically to
20 Governor McMaster, to South Carolina related to
21 Miracle Hill. It was in the Washington Post, it
22 was -- it was all over the news. Were you aware of
23 that at that time?

24 A No.

25 Q Okay. At the time you applied to -- you

1 submitted an application to Miracle Hill, were you
2 aware that they worked only at that time with
3 Protestant Christian foster parents?

4 A No, I wasn't.

5 Q Did you know at that time -- and when I say
6 "at that time," to be a little bit more precise we're
7 talking about like April and May approximately of
8 2019, around the time you applied. At that time did
9 you know that the South Carolina Department of Social
10 Services, SCDSS, would work with any qualified foster
11 parent or prospective foster parent of any religion or
12 no religion and any marital status?

13 A I actually was aware of that. However, I
14 have had lots of contact with a number of people that
15 I do not know personally that worked for DSS through
16 the school that I taught at. We would go through
17 regular evaluations. And I had been -- I guess I had
18 heard a number of times that going through them was
19 lengthy and not easy, and the agencies in the area had
20 the ability to shorten the process significantly and
21 do a very thorough job with a lot of support. So I
22 was aware that that was possible, but how realistic it
23 was as far as becoming a foster parent anytime soon, I
24 was not confident in that.

25 Q Okay. And when -- just to make sure I am

1 hearing what you're saying and understanding, right,
2 when you say through SCDSS, I think you said the
3 process was lengthy. Are you talking about the
4 process of becoming licensed as a foster parent, the
5 application and licensure process?

6 A Yes.

7 Q And you also said that your understanding
8 was that other agencies -- you're talking about
9 private foster agencies?

10 A Private organizations, yeah.

11 Q Okay. And you said agencies plural, that
12 there's more than one in your area and in the state
13 generally but specifically in your area?

14 A Yeah, I'm assuming so. I only know of
15 Miracle Hill because they're the only one that
16 advertises so -- but I'm assuming at this point that
17 there's more than one.

18 Q And maybe you just answered the last -- so
19 how did you decide -- you'd explained why you didn't
20 at the time want to apply directly with DSS. How did
21 you decide on Miracle Hill instead of one of the --
22 one of the other private agencies in your area?

23 A They're the only one that I knew about.
24 Every day on the way to work I passed billboards and,
25 you know, little signs that you stick in the grass

1 that line Wade Hampton saying become a foster parent,
2 contact Miracle Hill today. Like every single day.
3 And, I mean, they as far as -- like they were who you
4 think of here when you think of, you know, fostering a
5 child --

6 Q (Indiscernible audio) -- I'm sorry, I didn't
7 mean to interrupt.

8 A They are just the only ones that I knew of.

9 Q Okay. How did you -- how and when did you
10 first make contact with Miracle Hill?

11 A When we applied. Well, my wife had made
12 phone calls to them prior to ask about the application
13 process and if we needed to come in or do it online,
14 those things. I was never in contact with anyone
15 prior to our application.

16 Q Okay. So you hadn't spoken with anyone on
17 the phone but Brandy had?

18 A (Nods head.)

19 Q Okay. Do you -- and if you don't know,
20 that's fine, you don't know because I can ask her,
21 too. Do you know how many -- how many phone calls she
22 had, approximately?

23 A I don't know.

24 Q Okay. That's fine.

25 Do you know when you submitted -- I think

1 you said it was online. Do you know when you
2 submitted an application or a form or -- I'm asking
3 that question wrong. Let me back up.

4 You said it was -- the process was online.
5 What was the process?

6 A Filling out an application.

7 Q Okay. Is it -- was it like a PDF form or
8 like a website, a web page that you'd fill in
9 information and click submit?

10 A I don't recall.

11 Q Okay. That's fine. Do you remember when
12 you filled that out in whatever form it was and
13 submitted it?

14 A I don't remember.

15 Q Okay. And you said -- earlier this
16 afternoon you said that -- I don't remember your exact
17 wording but that the response from Miracle Hill was
18 like really quick?

19 A Uh-huh, yes.

20 Q Can you give me a time frame on that?
21 What -- do you have a sense or a recollection of --

22 A Within about a couple of days.

23 Q Okay.

24 A Maybe four but less than a week.

25 Q Okay. Do you think a private foster care

1 agency should take longer than that to reply to an
2 applicant?

3 A Well, I think what I anticipated was them
4 to -- for them to see if we were qualified to foster,
5 as in home studies and, you know, interviews and
6 references and all of those things. I did not realize
7 that they would find us disqualified to foster based
8 on a simple form with basic information.

9 Q And let me -- let me drill in on that a
10 little bit. Did they -- did Miracle Hill find you
11 disqualified or unqualified to be a foster parent?

12 A They denied our ability to be able to even,
13 like, be licensed to foster with them. Like they
14 denied our ability to have their services as far as
15 the entire process from beginning to end with
16 fostering.

17 Q But they didn't stop you from applying
18 elsewhere to be a foster parent, did they?

19 A No.

20 Q Did they suggest to you other private
21 agencies or public agencies that would work with you
22 to become a foster parent?

23 A I believe that they did send my wife an
24 e-mail. I don't know what the contents of that was.
25 They might have called her. It was not my

1 it's -- it's been -- we gave courtesy calls and then
2 they may or may not have checked in on us, but there's
3 nothing for us to share because there's never any
4 news. But, yeah, it's all -- I mean, it's all
5 basically the same.

6 Q Okay. Give me just a minute to glance
7 through notes I had here.

8 During the time leading up to your decision
9 to apply to Miracle Hill at the time where Brandy made
10 a couple of -- I say "a couple of" and I don't want to
11 put words in your mouth. I think she made a phone
12 call. It may have been more than one and she can
13 probably remember better than you can. But there was,
14 you know, one or more phone calls that she made, there
15 was internal discussion between the two of you, and
16 you were -- were you at that time -- did you talk to
17 Cindy and Lisa Bovee-Kemper about sort of that
18 decision process that you were going through at that
19 time?

20 A Do you mean did we share with them that,
21 like, we were ready and that we were moving forward
22 with trying to become foster parents, like the next
23 step since applying?

24 Q Yeah, let's start there. Yeah.

25 A Then, yes.

1 Q Okay. Let me make it a little more precise,
2 then. Did they know that you were thinking about or
3 planning to or contemplating applying to Miracle Hill
4 specifically?

5 A I'm not sure.

6 Q Okay. You just don't remember?

7 A Yeah, I don't remember.

8 Q Okay.

9 MR. COLEMAN: I think those are all the
10 questions that I have for right now. It is
11 possible that some of the other lawyers may
12 themselves have questions, so I'll give a chance
13 for the others to ask what they need to ask. But
14 I am, at least for the time being, done.

15 MS. NEWMAN: This is Christie Newman. I
16 don't have any questions.

17 MS. DUNN: Jonathan, do you have questions?

18 MR. RIDDLE: Yeah, this is Jonathan. I
19 don't have any other questions.

20 MS. DUNN: I just have a few. That's all
21 the Defendants' attorneys, correct?

22 MR. COLEMAN: Yeah. Me, Christie,
23 Jonathan --

24 MS. DUNN: I don't want to be overlooking
25 anybody.

1 MS. NEWMAN: I think that's everybody.

2 MS. DUNN: Okay. Well, I just have a few
3 questions.

4 EXAMINATION

5 BY MS. DUNN:

6 Q When you received the e-mail that we
7 discussed earlier in this deposition from Miracle
8 Hill, was it your clear understanding that your
9 application to foster through them had been rejected?

10 A Yes.

11 Q And I believe you answered some questions
12 from Mr. Coleman dealing with what kinds of monies
13 that Miracle Hill might receive from the state,
14 correct? Do you have any information at all about
15 what the actual contractual relationship is in terms
16 of finances between South Carolina Department of
17 Social Services and Miracle Hill?

18 A No. All I know is that they receive federal
19 and state funding.

20 Q But you don't know what funding or what?

21 A No.

22 Q And I believe you indicated that the times
23 that you've talked in public in the press conference
24 and in Dallas, you're talking about the rejection was
25 hard to do?

1 A Sure.

2 Q But it's not so much -- you were talking
3 about a past rejection, right?

4 A Right.

5 Q When you indicated that you were reluctant
6 to apply to other fostering agencies because you
7 didn't want to experience new rejection, was that a
8 different kind of pain?

9 A Yes.

10 Q Could you contrast them for us just to be a
11 little clearer?

12 A Am I allowed to use a metaphor?

13 Q Yes.

14 A Okay. If I skin my knee, that is a pain.
15 And then I go to clean it and it's likely to cause
16 more pain. Rubbing alcohol hurts when it's raw. But
17 I would still go clean it and put a Band-Aid on it
18 rather than go and knowingly intentionally risk
19 skinning my knee more and more and more times. So it
20 is a different kind of pain because, I mean, you just
21 don't want to knowingly walk into risk after risk
22 after risk having to go through what you just went
23 through and you know it's uncomfortable.

24 I had never done all these interviews
25 before. I had never talked to the press before. I

1 had never done anything like this. I was not sure,
2 did not know how uncomfortable it might be, but I knew
3 how uncomfortable and how hurtful it was to be
4 rejected like that.

5 Q And, again, in response to questions from
6 Mr. Coleman, you indicated that you've -- you have
7 dealt with epilepsy for some time. Has your epilepsy
8 ever affected your ability to parent children?

9 A Oh, absolutely not.

10 Q You also talked about concussions, hence the
11 headaches and the effects that you had from those
12 events of your past. Have any of those head injuries
13 ever affected your ability to parent?

14 A No.

15 Q And you identified Lisa as the -- what, is
16 it Bovee-Kemper?

17 A Yeah.

18 Q Let me get these names right. Lisa is the
19 minister at UU Church and Cindy is her wife?

20 A Yes.

21 Q Is Cindy also a minister?

22 A Yes.

23 Q And what denomination is Cindy a minister
24 in?

25 A I think it's Church of Christ or something.

1 I know she's -- she's Christian.

2 Q Is she Protestant Christian?

3 A I believe so.

4 MS. DUNN: I have no further questions.

5 MR. COLEMAN: Nor do it. That may be the
6 conclusion of your first deposition. I think the
7 court reporter wants us to stay on the record to
8 place our orders but --

9 THE COURT REPORTER: I do. Ms. Dunn, is she
10 going to read and sign or waive?

11 MS. DUNN: She's going to read and sign.

12 THE COURT REPORTER: Okay. Are you handling
13 the read and sign or should I send it to the
14 witness directly?

15 MS. DUNN: You shouldn't send it to me. I'm
16 a lame duck.

17 Currey, should they send it to you?

18 MS. SCHINDEL: Why don't they send it to us
19 because we'll order the transcript, also, so we
20 can have it all come to us.

21 MS. DUNN: Okay. So it should go to
22 Cravath, the Cravath firm. Send it to you,
23 Rebecca?

24 MS. SCHINDEL: Right, yeah. I sent you my
25 full information for purposes of ordering the

1 transcript, also.

2 THE COURT REPORTER: Okay. And, Mr.
3 Coleman, I'm assuming you're ordering, and then I
4 just need everyone's copy orders on the record,
5 how you like those, hard copies, electronic.

6 MS. NEWMAN: This is Christie Newman. I
7 like a e-trans, please.

8 THE COURT REPORTER: Okay.

9 MR. RIDDLE: This is Jonathan Riddle. Yeah,
10 we just need the e-tran.

11 THE COURT REPORTER: All right.

12 MS. SCHINDEL: Rebecca Schindel and we'll
13 also do the e-transcript.

14 THE COURT REPORTER: Okay. Mr. Cook, did
15 you want a copy?

16 MR. COOK: No, no, not directly. We're
17 co-counsel with Rebecca.

18 THE COURT REPORTER: Okay. And I'm not sure
19 if Maia is co-counsel as well.

20 MS. DUNN: She's with us.

21 MR. COOK: Maia's with Lambda Legal with me
22 so, yes, she's part of Plaintiffs' co-counsel.

23 THE COURT REPORTER: All right. Very good.
24 I think that's it right now.

25 MS. SCHINDEL: In terms of the transcript,